IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 42 OF 2006

K.N. Jyotheendran ...Applicant

Versus

Municipal Commissioner and another ...Respondents

Mr. Atul S. Rajadhyaksha, Senior Advocate, instructed by Mr. Kedar J. Wagle for the applicant.

Mr. S.S. Patwardhan for the respondents.

CORAM: **H.S. BEDI, C.J.**

DATE: **DECEMBER 01, 2006**.

P.C.

This application is filed under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator in terms of the arbitration clause reproduced hereunder.

> "In case of any dispute, the same shall be referred to the Commissioner of the Corporation and his decision shall be final and binding on the Agent.
>
> If the agent is not satisfied with this decision the agent shall within a period of 30 days from receipt of the decision, shall indicate his intention to refer the dispute to Arbitration, failing which the said decision shall be conclusive and the same shall not be questioned subsequently.

Within 30 days of receipt of notice from the agent or his intention to refer the dispute to arbitration, the Municipal Commissioner, shall send to the Agent a list of three officers of the rank of not less than Deputy Secretary to the Government of Maharashtra and who have not been connected with the work under the contract. The agent shall within 15 days of the receipt of this list, select one of them and who shall then be appointed as sole Arbitrator by the Municipal Commissioner, Kolhapur.

The Arbitration shall be conducted in accordance with the provisions of Arbitration Act, 1940, or any statutory modification thereof.

Only because matter is referred to arbitration will not entitle the agent to continue agreement and without fulfilling all other terms and conditions and clauses of the agreement and the Corporation shall be entitled to terminate the contract as per the Terms and conditions of the agreement, even though the matter is referred to arbitration. The agent shall not be entitled to claim any interim relief from the court on the ground that the matter has been referred to arbitration."

2. It appears that in accordance with the provisions of the aforesaid clause, the Respondent Corporation did suggest names of three persons out of whom one would be appointed as an Arbitrator. The applicant accepted Dr. Nitin Kareer, Collector, Sangli as the sole

Arbitrator.

3. Since the sole Arbitrator has withdrawn from the proceedings, the present application has been filed with a prayer that a substitute Arbitrator be appointed. The respondents have filed their reply and pointed out that efforts had been made by them in accordance with the arbitration clause to appoint a substitute Arbitrator. This fact, however, is disputed by the learned counsel for the applicant. I am, therefore, of the opinion that in these circumstances it would be appropriate that Mr. Justice S.N. Variava, retired Judge of the Supreme Court, be requested to take on the arbitration. The learned counsel have no dispute with regard to his appointment as an Arbitrator. It is ordered accordingly. Mr. Justice S.N. Variava is requested to act as an Arbitrator in this matter. The parties agree to inform the learned Arbitrator of this order. This petition is accordingly disposed of.

CHIEF JUSTICE